

KENTUCKY HIGH SCHOOL MOCK TRIAL RULES

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Rule 1103

I. RULES OF THE COMPETITION

The Rules of the Competition are derived from the rules of the National High School Mock Trial Tournament.

A. ADMINISTRATION

Rule 1.1. Rules

All trials are governed by the Rules of the Kentucky High School Mock Trial Competition and the Federal Rules of Evidence (Mock Trial Version).

Questions or interpretations of these rules are within the discretion of the mock trial coordinator, whose decision is final.

Rule 1.2. Code of Conduct

The Rules of Competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. The mock trial coordinator possesses discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct occurring while a team is present for the mock trial competition, for flagrant rule violations, and for breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge, or mock trial program.

Rule 1.3. Emergencies

During a trial, the presiding judge shall have discretion to declare an emergency and adjourn the trial for a short period of time to address the emergency.

In the event of an emergency, such as weather, that would cause a team to be unable to continue a trial or participate in a trial, the regional coordinator and mock trial coordinator will determine if the team will forfeit or if the trials will be re-scheduled. In the case of severe weather, the AOC has the authority to cancel and reschedule mock trial hearings.

Final determination of emergency, forfeiture, or reduction of points, will be made by the regional coordinators and mock trial coordinator.

B. THE PROBLEM

Rule 2.1. The Problem

The problem is an original fact pattern, which may contain any or all of the following:

statement of facts, indictment, stipulations, witness statements/affidavits, jury charges, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics which would allow them to be played by either males or females. All three of the witnesses must be called.

Rule 2.2. Witness Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 2.3, "unfair extrapolation."

A witness is not bound by facts contained in other witness statements.

Rule 2.3 Unfair Extrapolation

A fair extrapolation is one that is neutral. Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial.

If a witness is asked information not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case.

Attorneys for the opposing team may refer to Rule 2.3 in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the statement of facts."

Possible rulings by a judge include:

- a) No extrapolation has occurred;
- b) An unfair extrapolation has occurred;
- c) The extrapolation was fair; or
- d) Ruling is taken under advisement.

The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

When an attorney objects to an extrapolation, the judge shall rule in open court to clarify the course of further proceedings.

Rule 2.4 Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender.

Coaches are required to confer with one another one week prior to the competition to disclose the gender of their witnesses.

Rule 2.5 Voir Dire

Voir dire examination of a witness is not permitted.

C. TEAMS

Rule 3.1. Team Eligibility

- a) Each public or private school in Kentucky may register up to two (2) teams in the competition. All team members must be enrolled in grades 9 - 12 in the registering school.
- b) Teams will be notified by January as to which side they will have to present in the first round of regional competitions. The teams should be prepared to represent either party since they will have to switch sides as they progress through the competition.
- c) PAIRINGS

- 1. For the purposes of the mock trial tournament, the state is divided into eight regions. The counties included in each region are as follows:

Region 1: Ballard, Caldwell, Calloway, Carlisle, Crittenden, Daviess, Fulton, Graves, Henderson, Hickman, Hopkins, Livingston, Lyon, Marshall, McCracken, McLean, Muhlenberg, Union, Webster.

Region 2: Allen, Barren, Breckinridge, Butler, Christian, Cumberland, Edmonson, Grayson, Hancock, Hart, Logan, Meade, Metcalfe, Monroe, Ohio, Simpson, Todd, Trigg, Warren.

Region 3: Anderson, Bourbon, Boyle, Bullitt, Franklin, Green, Hardin, Henry, Jessamine, Larue, Marion, Mercer, Nelson, Oldham, Scott, Shelby, Spencer, Taylor, Trimble, Washington, Woodford.

Region 4: Jefferson.

Region 5: Fayette.

Region 6: Adair, Bell, Casey, Clark, Clay, Clinton, Garrard, Harlan, Jackson, Knox, Laurel, Leslie, Letcher, Lincoln, Madison, McCreary, Owsley, Perry, Pulaski, Rockcastle, Russell, Wayne, Whitley.

Region 7: Bath, Boone, Bracken, Campbell, Carroll, Fleming, Gallatin, Grant, Harrison, Kenton, Mason, Menifee, Montgomery, Nicholas, Owen, Pendleton, Robertson, Rowan.

Region 8: Boyd, Breathitt, Carter, Elliott, Estill, Floyd, Greenup, Knott, Lee, Johnson, Lawrence, Lewis, Magoffin, Martin, Morgan, Pike, Powell, Wolfe.

2. Some counties may be shifted to a surrounding region to make the pairings in each region as even as possible. This decision shall be made by the mock trial coordinator, and is not intended to cause undue hardship on any participating team.
3. Schools will be matched randomly for the first round of the regional competition. The second round will be power matched, with side constraints. **We highly encourage at least two practice rounds before the regional competition. The regional coordinators and mock trial coordinator will be available to assist with scheduling practice rounds.**
4. Pairings for the competitions are randomly selected for the first round. Following the second competition, **the team advancing to the state competition will be selected based on the following criteria in the order listed: wins, ballots, point margin, and total points.**

*** If more than one team finishes with a 2-0 record, the top two teams will participate in a playoff that will determine which team advances to state.**

Rule 3.2. Team Composition

Each team should have a teacher/sponsor and an attorney/coach. Only one practicing attorney can be designated as the official attorney/coach, although other local attorneys and judges may assist.

Teams can consist up to **eleven** members assigned to roles representing the prosecution/plaintiff and defense/defendant sides. Only **six** members may participate in any given round. (See Rule 3.3 for further explanation referring to team participation).

Each team should have one (1) timekeeper. The timekeeper will keep time for their own team, as well as their opponent. They may flash cards to their team, showing them how

much time they have. The timekeepers should know in advance when to stop and start the time.

Rule 3.3. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members in each trial round. For each trial round, teams shall use three students as attorneys and three students as witnesses.

Rule 3.4. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross-examination; in addition, one will present the opening statements and another will present the closing arguments. In other words, the eight attorney duties for each team will be divided as follows:

1. Opening Statements
2. Direct Examination of Witness #1
3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross Examination of Witness #1
6. Cross Examination of Witness #2
7. Cross Examination of Witness #3
8. Closing Argument (including Rebuttal) [See Rule 4.5]

Opening Statements must be given by both sides at the beginning of the trial.

The attorney who examines a particular witness on direct examination is the only person who may make objections to the opposing attorney's questions of that witness' cross-examination, and the attorney who cross-examines a witness will be the only one permitted to make objections during the direct examination of that witness.

Each team must call three witnesses. Witnesses must be called only by their own team during their case-in-chief and examined by both sides. Witnesses may not be recalled by either side.

Rule 3.5. Team Roster Form

Copies of the Team Roster Form must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified by the code assigned to them. No information identifying team origin should appear on the form. Before beginning a trial, the teams must exchange copies of the Team Roster Form. The Form should identify the gender of each witness so that references to such parties will be made in

the proper gender. Copies of the Team Roster Form should also be made available to the judging panel and presiding judge before each round.

D. THE TRIAL

Rule 4.1. Courtroom Setting

The Plaintiff/Prosecution team shall be seated closest to the jury box. If the jury box is located in the center, the Plaintiff/Prosecution shall be seated to the left while facing the judge. No team shall rearrange the courtroom without prior permission of the regional coordinator, mock trial coordinator, or judge.

Rule 4.2. Stipulations

Stipulations shall be considered part of the record and already admitted into evidence. The stipulations may be referenced to during opening statements, closing arguments, and during the course of the trial.

Rule 4.3. Reading Into The Record Not Permitted

Stipulations, the indictment, or the Charge to the Jury will not be read into the record.

Rule 4.4. Swearing of Witnesses

The following oath may be used before questioning begins:

"Do you promise that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?"

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate all witnesses are assumed to be sworn, or the above oath will be conducted by the presiding judge. The presiding judge may swear the witnesses individually or as a group.

Rule 4.5. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and Redirect (optional) Examination (25 minutes per side)
3. Cross and Re-cross (optional) Examination (20 minutes per side)
4. Closing Argument (5 minutes per side)

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve a portion of its closing time for a rebuttal. The Prosecution/Plaintiff's rebuttal is limited to the scope of the Defense's/Defendant's closing argument.

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

Rule 4.6. Timekeeping

Time limits are mandatory and will be enforced. Each team is permitted to have its own timekeeper and timekeeping aids. The teams may be responsible for one timekeeper each at the regional and state competitions.

Time for objections, extensive questioning from the judge, for pre-trial or bench conferences, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

Time does not stop for introduction of exhibits.

Rule 4.7. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring judges may determine individually whether or not to discount points in a category because of the over-runs in time.

Rule 4.8. Prohibited Motions

No motions may be made, other than motions to strike after an evidentiary ruling.

Rule 4.9. Sequestration

Teams may not invoke the rule of sequestration.

Rule 4.10. Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should be made from the counsel table in the educational interest of handling all matters in open court.

Rule 4.11. Supplemental Material / Costuming

Teams may refer only to materials included in the trial packet. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories, and make-up, which are case specific.

The use of visual aids is permitted with the following requirements:

- 1) A visual aid must be consistent with the affidavit of the witness using it.
- 2) A visual aid must be made available to the opposing side for use.
- 3) For purposes of this competition, visual aids must not be defaced.
- 4) No power is to be used during any competition.

The only documents which the teams may present to the presiding judge or scoring panel are the individual exhibits as they are introduced into evidence and the team roster forms. Exhibit notebooks are not to be provided to the presiding judge or scoring panel.

Rule 4.12. Trial Communication

Coaches, teachers, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any emergency recess which may occur. Team members may, among themselves, communicate during the trial; however no disruptive communication is allowed. Signaling of time by the teams' timekeeper shall not be considered a violation of this rule.

Coaches, teachers, alternates, and observers must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar and communicate with each other. Anyone disrupting the court, may be removed by the presiding judge or AOC personnel.

Rule 4.13. Viewing a Trial

Team members, alternates, attorney/coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except for those authorized by the AOC, are not allowed to view other teams' performances in any competition, so long as their team remains in the competition.

Rule 4.14. Videotaping/Photography

Any team has the option to refuse participation in videotaping, tape recording, and still photography by opposing teams. Photographers at the request of the AOC may photograph any trial.

Media coverage will be allowed.

Rule 4.15. Jury Trial

The case will be tried to a jury; arguments are to be made to judge and jury. Teams should address the scoring judges as the jury.

Rule 4.16. Standing During Trial

Unless excused by the judge, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections.

Rule 4.17. Objections During Opening Statement/Closing Argument

No objections may be raised during opening statements or during closing arguments.

If a team believes an objection would have been proper during the opposing team's opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, "If I had been permitted to object during opening statement/closing argument, I would have objected to the opposing team's statement that _____. The presiding judge will not rule on this "objection."

Presiding and scoring judges will weigh the "objection" individually. No rebuttal by opposing team will be heard.

Rule 4.18. Objections

1. **Argumentative Questions:** An attorney shall not ask argumentative questions. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.
2. **Lack of Proper Predicate/Foundation:** Attorneys shall lay proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
3. **Assuming Facts Not in Evidence:** Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a "hypothetical question").
4. **Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")

5. **Non-Responsive Answer:** A witness' answer is objectionable if it fails to respond to the question asked.
6. **Repetition:** Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Teams are not precluded from raising additional objections which are available under the *Kentucky High School Mock Trial Rules of Evidence*.

Rule 4.19. Reserved.

Rule 4.20. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence:

1. All evidence shall be pre-marked as exhibits.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. ___?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. "I now hand you what has been marked as Exhibit No. ___ for identification."
6. Ask the witness to identify the exhibit. "Would you identify it please?"
7. Witness answers with identification only.
8. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. ___ into evidence at this time. The authenticity of this exhibit has been stipulated."
9. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
10. Opposing Counsel: "No, your Honor," or "Yes, your Honor." If the response is "yes," the objection shall be stated on the record. Court: "Is there any response to the objection?"
11. Court: "Exhibit No. ___ is/is not admitted."

Rule 4.21. Use of Notes

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes.

Rule 4.22. Redirect/Recross

Redirect and Recross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence (Mock Trial Version).

Rule 4.23. Scope of Closing Arguments

Closing Arguments must be based on the actual evidence and testimony presented during the trial.

Rule 4.24. Reserved**Rule 4.25. Offers of Proof**

No offers of proof or avowal may be requested or tendered.

E. JUDGING AND TEAM ADVANCEMENT**Rule 5.1. Finality of Decisions**

All decisions of the judging panel are FINAL.

Rule 5.2 Composition of Judging Panels

The judging panel will consist of at least three individuals. The composition of the judging panel and the role of the presiding judge will be at the discretion of the mock trial coordinator, with the same format used throughout the competition, as follows:

1. One presiding judge and two scoring judges (all three of whom complete score sheets); or
2. One presiding judge and three scoring judges (scoring judges only complete score sheets).

At the discretion of the mock trial coordinator, the Championship round may have a larger panel.

All presiding and scoring judges receive the mock trial case in advance.

Rule 5.3. Score Sheets/Ballots

The term “ballot” will refer to the decision made by a scoring judge as to which team made the better presentation in the round. The term “score sheet” is used in reference to the form on which presentation points are recorded. Score sheets are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of the presiding judge. The team that earns the highest points on an individual judge’s score sheet is the winner of that ballot. The team that receives the majority of the ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate about any special awards (i.e., Outstanding Attorney/Witness), the judging panel should not deliberate about individual scores.

*** Scoring shall be on knowledge, application, and performance not on outcome.** Scoring shall be based on the knowledge and application of the student witnesses and attorneys. Scores should not be based on the merits or outcome of the case as it would be in an actual trial.

Rule 5.4. Completion of Score Sheets

Each scoring judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each scoring judge shall total the sum of each team's individual points, place this sum in the Column Totals box, and enter the team ("P" for prosecution/plaintiff or "D" for defense/defendant) with the higher total number of points in the Tiebreaker Box. **NO TIE IS ALLOWED IN THE COLUMN TOTALS BOXES.**

In the event of a mathematical error in tabulation by the scoring judges which, when corrected, results in a tie in the column Totals boxes, the Tiebreaker Box shall determine award of the ballot.

Rule 5.5. Team Advancement

Teams will be ranked based on the following criteria in the order listed:

1. Win/Loss Record – equals the number of rounds won or lost by a team;
2. Total Number of Ballots – equals the number of scoring judges’ votes a team earned in preceding rounds;
3. Point Spread Against Opponents – The point spread is the difference between the total points earned by the team;
4. Total Number of Points Accumulated in Each Round.

Rule 5.6. Power Matching/Seeding

A random method of selection will determine opponents in the first round. A power-match system will determine opponents for all other rounds with side constraints. The top team emerging with the strongest record from the two rounds will advance to the state competition.

Power matching will provide that:

1. Pairings for the first round will be at random;
2. All teams are guaranteed to present each side of the case at least once (**however the teams are not guaranteed this at the state competition**);
3. Brackets will be determined by win/loss record with side constraints. Sorting within brackets will be determined in the following order: (1) side constraints; (2) win/loss record; (3) ballots; (4) point spread;
4. Teams will not meet the same opponent twice (unless there are three or less teams in a region);
5. If there is an odd number of teams in the bracket, the team that does not participate in the first round of trials, will not know their opponent until after the first round is completed.

*** If more than one team finishes with a 2-0 record, the top two teams will participate in a playoff that will determine which team advances to state.**

Rule 5.7. Selection Of Sides For Championship Round.

1. The team with the letter/numerical code which comes first will be considered the "Designated Team."
2. The coin will be tossed by a designee of the mock trial coordinator.
3. If the coin comes up heads, the Designated Team shall represent the plaintiff/prosecution in the Championship Round. If the coin comes up tails, the Designated Team shall represent the defense/defendant.

F. DISPUTE RESOLUTION

Rule 6.1. Objecting to a Rules Violation

Disputes which occur within the bar must be filed immediately to the presiding judge. If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The student may communicate with counsel and/or student witnesses before lodging the notice of dispute. The presiding judge shall rule on the matter, and the trial shall continue. Any alleged violation which is known, or through the exercise of reasonable diligence should have been discovered during the trial and which is not brought to the attention of the presiding judge, is waived.

At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure.

Rule 6.2. Reserved

Rule 6.3. Effect of Violation on Score

If the presiding judge determines that a substantial rules violation has occurred, the judge will inform the scoring judges of the dispute. The dispute may or may not affect the judges' scoring decisions, but the matter shall be left to the discretion of the scoring judges. Their decision shall be FINAL.

Rule 6.4. Reserved

II. FEDERAL RULES OF EVIDENCE (Mock Trial Version)

In American trials complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. The burden is on the mock trial team to know the Federal Rules of Evidence (Mock Trial Version) and to be able to use them to protect its client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the rules of evidence have been simplified. They are based on the Federal Rules of Evidence and its numbering system. Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure. Text in italics represents simplified or modified language.

Not all judges will interpret rules of evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rules they think appropriate.

Article I. General Provisions

Rule 101. Scope

These rules govern proceedings in the *Kentucky High School Mock Trial Competition*.

Rule 102. Purpose and Construction

These Rules *are intended to ensure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.*

Article II. Judicial Notice

Not Applicable

Article III. Presumptions in Civil Actions and Proceedings

Not Applicable

Article IV. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided *in these Rules*. *Irrelevant evidence is not admissible.*

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, *if it confuses the issues, if it is misleading, or if it causes undue delay, wastes time, or is a needless presentation of cumulative evidence.*

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

- (a) Character Evidence. -- Evidence of a person's character or *character trait*, is not admissible to prove *action regarding* a particular occasion, except:
 - (1) Character of accused. -- Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
 - (2) Character of victim. -- Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
 - (3) Character of witness. -- Evidence of the character of a witness as provided in Rules 607, 608 and 609.
- (b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

- (a) Reputation or opinion. -- In all cases where evidence of character or a *character trait* is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, *questions may be asked regarding relevant, specific conduct*.
- (b) Specific instances of conduct. -- In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Rule 406. Habit; Routine Practice

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eye-witnesses, is relevant to prove that the conduct of the person or organization, on a particular occasion, was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures

When measures are taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose; such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar

expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements

Except as otherwise provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against a defendant who made the plea or was a participant in the plea discussions:

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of nolo contendere;
- (3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the forgoing pleas; or
- (4) any statement made in the course of plea discussions made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Rule 411. Liability Insurance (*civil case only*)

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Article V. Privileges

Rule 501. General Rule

There are certain admissions and communications excluded from evidence on grounds of public policy. Among these are:

- (1) communications between husband and wife;*
- (2) communications between attorney and client;*
- (3) communications among grand jurors;*
- (4) secrets of state; and*
- (5) communications between psychiatrist and patient.*

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless *the witness has personal knowledge of the matter*. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 2.2.)

Rule 607. Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 608. Evidence of Character and Conduct of Witness

- (a) Opinion and reputation evidence of character. -- The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.
- (b) Specific instances of conduct. -- Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination with respect to matters related only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime (*This rule applies only to witnesses with prior convictions*)

- (a) General Rule. -- For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment of one year or more, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.
- (b) Time Limit. -- Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.
- (c) Effect of pardon, annulment, or certificate of rehabilitation. -- Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or imprisonment of one year or more, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.
- (d) Juvenile adjudications. Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.
- (e) Not applicable.

Rule 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Rule 611. Mode and Order of Interrogation and Presentation

- (a) Control by Court. -- The Court shall exercise reasonable control over *questioning* of witnesses and presenting evidence so as to (1) make the *questioning* and presentation effective for ascertaining the truth, (2) to avoid needless *use* of time, and (3) protect witnesses from harassment or undue embarrassment.
- (b) Scope of cross-examination. -- *The scope of cross-examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.*
- (c) Leading questions. -- Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.
- (d) Redirect/Recross. -- *After cross-examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross-examination. Likewise, additional questions may be asked by the cross-examining attorney on recross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.*

Rule 612. Writing Used to Refresh Memory

If a written statement is used to refresh the memory of a witness either while or before testifying, the Court shall determine that the adverse party is entitled to have the writing produced for inspection. The adverse party may cross-examine the witness on the material and introduce into evidence those portions which relate to the testimony of the witness.

Rule 613. Prior Statements of Witnesses

Examining witness concerning prior statement. -- In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

Extrinsic evidence of prior inconsistent statement of witness. -- Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise.

Rule 703. Basis of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issue

- (a) *Opinion or inference testimony* otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.
- (b) *In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.*

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefore without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event may be required to disclose the underlying facts or data on cross-examination.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

- (a) Statement. -- A "statement" is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) Declarant. -- A "declarant" is a person who makes a statement.
- (c) Hearsay. -- "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- (d) Statements which are not hearsay. -- A statement is not hearsay if:
 - (1) Prior statement by witness. -- The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or
 - (2) Admission by a party-opponent. -- The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Rule 802. Hearsay Rule

Hearsay is not admissible, except as provided by these rules.

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

- (1) Present sense impression. -- A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
- (2) Excited utterance. -- A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- (3) Then existing mental, emotional, or physical conditions. -- A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
- (4) Statements for purposes of medical diagnosis or treatment. -- Statements made for the purpose of medical diagnosis or treatment.
- (5) Recorded Recollection. -- A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.
- (6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances or preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, associations, profession, occupation, and calling of every kind, whether or not conducted for profit.
- (18) Learned treatises. -- To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as

a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.

- (21) Reputation as to character. -- Reputation of a person's character among associates or in the community.
- (22) Judgment of previous conviction. -- Evidence of a judgment finding a person guilty of a crime punishable by death or imprisonment of one year or more, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

Rule 804. Hearsay Exceptions; Declarant Unavailable

- (a) **Definition of unavailability.** “Unavailability as a witness” includes situations in which the declarant –
 - (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or
 - (2) persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so; or
 - (3) testifies to a lack of memory of the subject matter of the declarant’s statement; or
 - (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
 - (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant’s attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant’s attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

- (b) **Hearsay exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
 - (1) **Former testimony.** Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in

compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

- (2) **Statement under belief of impending death.** In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.
- (3) **Statement against interest.** A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
- (4) **Statement of personal or family history.** (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
- (6) **Forfeiture by wrongdoing.** A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

Article IX. Not applicable.

Article X. Contents of Writing, Recordings and Photographs – Not applicable.

Article XI. Other

Rule 1103. Title.

These rules may be known and cited as the Federal Rules of Evidence (Mock Trial Version).